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8

9                   **UNITED STATES DISTRICT COURT**  
10                   **CENTRAL DISTRICT OF CALIFORNIA**  
11                   **SOUTHERN DIVISION**

12 DOMENICO D'CARPIO, Individually  
13 and On Behalf of all Others Similarly  
Situated,

Case No.: 2:19-cv-00174-JLS-RAO

**FIRST AMENDED COLLECTIVE  
AND CLASS ACTION COMPLAINT**

14                   Plaintiffs,

**JURY TRIAL DEMANDED**

15 v.  
16 SELDAT, INC., and SELDAT  
17 DISTRIBUTION, INC.,

18                   Defendants.

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1           **I. INTRODUCTION**

2           1. Plaintiff Domenico D'Carpio (“Plaintiff”) brings this case as a  
3 collective action under the Federal Fair Labor Standards Act (“FLSA”) and as a  
4 class action under Rule 23 of the Federal Rules of Civil Procedure. As set forth  
5 below, Plaintiff worked as a security guard for Defendant Seldat, Inc. and/or  
6 Defendant Seldat Distribution, Inc. (“Seldat and/or Seldat Distribution”, collectively  
7 “Defendants”) at their Compton, California facility from July 2017 to June 2018.  
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9           10          2. While working as a security guard for Seldat and/or Seldat Distribution,  
11 Plaintiff was improperly classified as an independent contractor, although the work  
12 he performed for Seldat and/or Seldat Distribution was that of an employee both  
13 under the FLSA and the California Labor Code.  
14

15           16          3. As a result of this misclassification, Plaintiff was unlawfully deprived  
17 of overtime pay; was deprived of meal and rest breaks in violation of Cal. Lab. Code  
18 §§ 226.7 and 512; was not given proper wage statements in violation of Cal. Lab.  
19 Code §226(a).  
20

21           22          4. Plaintiff brings his FLSA claims on behalf of a proposed collective of  
23 similarly situated security guards, classified as independent contractors and who  
24 worked for Seldat and/or Seldat Distribution nationwide in the last three years who  
25 may opt in to this case under the Federal Fair Labor Standards Act, 29 U.S.C. §§  
26 201 et seq. Seldat and/or Seldat Distribution has violated the FLSA by failing to  
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1 pay these individuals overtime compensation for hours worked in excess of 40 a  
2 week.

3       5. Plaintiff also brings his California state law claims under Rule 23 of the  
4 Federal Rules of Civil Procedure on behalf of a proposed class of similarly situated  
5 security guards who have worked for Seldat and/or Seldat Distribution in California.  
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7       6. Seldat and/or Seldat Distribution has violated the California Labor  
8 Code by (1) failing to pay security guards minimum wage for all hours worked, and  
9 overtime compensation for hours worked in excess of 40 a week; (2) depriving  
10 security guards of meal and rest breaks; (3) taking improper deductions from the  
11 security guards' pay; (4) improperly forcing security guards to bear expenses related  
12 to their work for Seldat and/or Seldat Distribution; and (5) failing to provide the  
13 security guards with accurate wage statements.  
14

15 **II. JURISDICTION AND VENUE**

16       7. The jurisdiction of this court is invoked pursuant to 28 U.S.C. §1331  
17 because Plaintiff has brought claims under the Federal Fair Labor Standards Act.  
18 The court also has supplemental jurisdiction over the state law claims pursuant to 28  
19 U.S.C. § 1337.  
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21       8. Venue is properly in the Central District of California, Western  
22 Division in that the Defendants maintain a facility in Compton, California where the  
23 Plaintiff worked.  
24

1           **III. PARTIES**

2           9. Plaintiff Domenico D'Carpio (“Plaintiff”) is an adult resident of Los  
3           Angeles County, California, residing in Bellflower, California.  
4

5           10. Seldat is a self-described “supply chain” company with its headquarters  
6           in the state of New Jersey, which maintains work locations and offices in several  
7           communities in the state of California including Compton, California.  
8

9           11. Plaintiff is informed and believes that Seldat Distribution, Inc. is a  
10          subsidiary of Seldat with its headquarters in the state of New Jersey, which  
11          maintains work locations in California and New Jersey among other states.  
12

13           **IV. CLASS AND COLLECTIVE ALLEGATIONS**

14           12. Plaintiff brings this action as a collective action under §216(b) of the  
15          Federal Fair Labor Standards Act, 29 U.S.C. §§201 et seq. (“FLSA”), and as a class  
16          action under Rule 23 of the Federal Rules of Civil Procedure.  
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18           13. The putative members of the proposed collective action under the  
19          FLSA consists of all individuals who in the last three years worked directly for  
20          Seldat and/or Seldat Distribution as security guards and who were classified as  
21          independent contractors with respect to their work within the United States (“FLSA  
22          Collective”).  
23

25           14. Plaintiff also brings this case as a Rule 23 class action, on behalf of all  
26          individuals who worked as independent contractors for Seldat and/or Seldat  
27          Distribution within the state of California (“California Class”).  
28

1       15. The FLSA Collective and California Class are together referred to as  
2 the “Classes.”

3       16. Plaintiff reserves the right to redefine and/or subdivide the Classes  
4 prior to notice or class certification, and thereafter, as necessary.

6       17. It is appropriate to treat this action both as a collective action under  
7 §216(b) of the FLSA and a class action under Rule 23, because Plaintiff and the  
8 Classes were subject to the common practices and policies of being deprived of  
9 overtime, being deprived of meal and rest breaks; and being deprived of accurate  
10 wage statements. All security guards performed the same basic category of work,  
11 thus making class treatment appropriate in both instances.

14       18. The claims of the named Plaintiff are representative and similar to the  
15 claims of the proposed Classes, the named Plaintiff and his attorneys can adequately  
16 protect the interests of the Classes and are not in conflict with any members of the  
17 Classes.

19       19. The claims of the named Plaintiff are typical of the claims of the  
20 Classes. Treating this action as a class and collective action would be far preferable  
21 to permitting numerous individual actions. Further, since all of the  
22 potential members of the Classes were subject to the same overarching violations of  
23 law, namely being deprived of overtime and being deprived of accurate wage  
24 statements, there are common issues of law that will predominate over  
25 individualized issues.

1           **V. STATEMENT OF FACTS**

2           20. In or about July 2017, Plaintiff was hired by Seldat and/or Seldat  
3 Distribution to work as a security guard at Seldat and/or Seldat Distribution's  
4 facility at 1121 West Artesia Boulevard, Compton, California. Plaintiff was  
5 classified by Seldat and/or Seldat Distribution as an "independent contractor"  
6 despite meeting the criteria to be an employee under both federal and California law.  
7 Moreover, Seldat and/or Seldat Distribution engage other security guards as so-  
8 called "independent contractors" at the Compton, California facility and, according  
9 to information and belief, at their other facilities in California and in the U.S.  
10 generally.

11          21. While Plaintiff worked as a security guard, he was expected to perform  
12 according to the instructions and expectations established by Seldat and/or Seldat  
13 Distribution. His work was integral to Seldat and/or Seldat Distribution's operations  
14 in which he worked. Seldat and/or Seldat Distribution exercised substantial control  
15 over the manner in which he performed his services and Seldat and/or Seldat  
16 Distribution exercised all necessary control over its operations as a whole, of which  
17 the security guards were an integral part.

18          22. Plaintiff and the California Class typically worked for five (5) or more  
19 hours each shift and were not provided with legally mandated meal breaks during  
20 their shifts under California law.

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23. Plaintiff and the California Class typically worked longer than four (4) hours and were not provided with legally mandated rest breaks during their shifts under California law.

24. Plaintiff and the Classes consistently worked over 8 hours a day and 40 hours a week, in each case without overtime pay.

25. Plaintiff and those members of the California Class who no longer work for Seldat and/or Seldat Distribution were not paid all of their final wages when they ended their employment.

26. Plaintiff and the California Class were not provided with legally compliant wages statements semi-monthly as required under California law.

COUNT I

## **FEDERAL FAIR LABOR STANDARDS ACT (Plaintiff and FLSA Collective)**

27. The actions of Seldat and/or Seldat Distribution as set forth above constitute a willful violation of the Federal Fair Labor Standards Act, 29 U.S.C. §§201 et seq, since Seldat and/or Seldat Distribution knowingly and deliberately and improperly classified Plaintiff and other security guards as independent contractors instead of employees, even though these individuals clearly should be defined as employees based on the nature of their work and their relationship to Seldat and/or Seldat Distribution under the federal “economic realities test.” Thus, Seldat and/or Seldat Distribution failed to pay overtime of at the 1.5 times the regular rate of pay

1 for every hour of work beyond 40 hours per workweek. This claim is brought on  
2 behalf of a collective of similarly situated individuals who have worked for Seldat  
3 and/or Seldat Distribution throughout the United States.  
4

5 **COUNT II**

6 **CALIFORNIA LABOR CODE §§ 510 AND 1194**  
7 **(Plaintiff and California Class)**

8 28. The actions of Seldat and/or Seldat Distribution as set forth above  
9 violate California Labor Code §§510, 1194 which require an employer to  
10 compensate employees at one-and-a-half times the employee's regular rate of pay  
11 for all hours worked in excess of eight, up to and including 12 hours in a workday,  
12 and for the first 8 hours worked on the seventh consecutive day of work in a  
13 workweek, and double the employee's regular rate of pay for all hours worked in  
14 excess of 12 in a workday and for all hours worked in excess of 8 hours worked on  
15 the seventh consecutive day of work in a workweek. Seldat and/or Seldat  
16 Distribution failed to pay Plaintiff and other California "independent contractor"  
17 security guards overtime at the appropriate rate required by Cal. Lab. Code §510,  
18 since it had a policy of not paying the "independent contractor" security guards, who  
19 were in fact employees of Seldat and/or Seldat Distribution, overtime. Pursuant to  
20 Cal. Lab. Code §1194, Plaintiff and other California "independent contractor"  
21 security guards are entitled to recovery of unpaid overtime compensation, as well as  
22 attorneys' fees and costs. This claim is brought on behalf of a class of similarly  
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1 situated individuals who have worked for Seldat and/or Seldat Distribution in  
2 California.

3 **COUNT III**  
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5 **CALIFORNIA LABOR CODE §§ 226.7, 512**  
6 **(Plaintiff and California Class)**

7 29. Seldat and/or Seldat Distribution's conduct, as set forth above, in  
8 misclassifying Plaintiff and other California security guards as independent  
9 contractors, and failing to provide them with meal and rest breaks during their  
10 workdays constitutes a violation of Cal. Lab. Code §§ 226.7 and 512. Seldat and/or  
11 Seldat Distribution was and is required to (but did not) provide a meal period of at  
12 least 30 minutes for any shift over 5 hours, to be provided within the first 5 hours;  
13 and a second meal period off at least 30 minutes for shifts over 10 hours. Seldat  
14 and/or Seldat Distribution also was and is required to (but did not) provide rest  
15 breaks of no less than 10 minutes for every 4 hours worked. This claim is brought  
16 on behalf of a class of similarly situated individuals who have worked for Seldat  
17 and/or Seldat Distribution in California.  
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21 **COUNT IV**  
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23 **CALIFORNIA LABOR CODE § 203**  
24 **(Plaintiff and California Class)**

25 30. Seldat and/or Seldat Distribution's failure to pay wages due to Plaintiff  
26 and proposed class members as alleged above was willful in that Seldat and/or  
27 Seldat Distribution knew wages were due but failed to pay them. Plaintiff and class  
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members who no longer work for Seldat and/or Seldat Distribution are entitled to penalties under Cal. Lab. Code § 203, which provides that, if an employer willfully fails to pay an employee all wages due within 72 hours of their resignation or immediately if they did not resign (were terminated or the job ended according to a pre-established schedule), the employee's wages shall continue as a penalty until paid for a period of up to 30 days from the time they were due.

## COUNT V

### **CALIFORNIA LABOR CODE § 226(a) (Plaintiff and California Class)**

31. The actions of Seldat and/or Seldat Distribution as set forth above violate Section 226(a) of the California Labor Code, which provides that “[e]very employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees . . . an accurate itemized statement in writing showing . . . [the] total hours worked by the employee”, “the number of piece-rate units earned”, “all deductions” and “all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.” Cal. Lab. Code §226(a). This claim is brought on behalf of a class of similarly situated individuals who have worked for Seldat and/or Seldat Distribution in California. Seldat and/or Seldat Distribution has knowingly and intentionally failed to comply with Cal. Lab. Code § 226 because it has failed to provide to its “independent contractor” security guards wage statements which accurately

1 reflected their piece rate and the number of piece rate units earned, in violation of §  
2 226(a). This claim is brought on behalf of a class of similarly situated individuals  
3 who have worked for Seldat and/or Seldat Distribution in California.  
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5 **COUNT VI**

6 **CAL. BUS. & PROF. CODE §17200, et seq.**  
7 **(Plaintiff and California Class)**

8 32. Seldat and/or Seldat Distribution's conduct, as set forth above, violates  
9 the California Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 et seq.  
10 ("UCL"). Seldat and/or Seldat Distribution's conduct constitutes unlawful business  
11 acts or practices, in that Seldat and/or Seldat Distribution has violated California  
12 Labor Code Sections 1194, 226.7 and 512. Pursuant to California Business and  
13 Professions Code § 17203, Plaintiff and class members seek declaratory and  
14 injunctive relief for Seldat and/or Seldat Distribution's unlawful conduct and to  
15 recover restitution. Pursuant to California Code of Civil Procedure § 1021.5,  
16 Plaintiff and class members who worked for Seldat and/or Seldat Distribution in  
17 California are entitled to recover reasonable attorneys' fees, costs, and expenses  
18 incurred in bringing this action.  
19

20 **VI. JURY DEMAND**

21 33. Plaintiff requests a trial by jury on all of his claims.  
22

23 **VII. PRAYER FOR RELIEF**

24 WHEREFORE Plaintiff requests that this Court enter the following relief:  
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- 1        a.      Certify a collective action pursuant to 29 U.S.C. § 216(b) and authorize  
2 the issuance of notice to similarly-situated individuals who work or worked as  
3 security guards for Seldat and/or Seldat Distribution during the past three years;  
4
- 5        b.      Certify a class action pursuant to Federal Rule of Civil Procedure 23  
6 and appoint Plaintiff and his counsel to represent the class;  
7
- 8        c.      Declare and find Seldat and/or Seldat Distribution violated Cal. Lab.  
9 Code §§ 1194, 226.7, 512, 203, 226 and Bus. & Prof. Code § 17200, et seq.;  
10
- 11       d.      Award compensatory damages, including all unpaid minimum and  
12 overtime wages, expenses owed, deductions, and liquidated damages in an amount  
13 according to proof;
- 14       e.      Award liquidated damages under the FLSA;
- 15       f.      Award all interest, costs and attorney's fees incurred prosecuting this  
16 claim;
- 17       g.      Enter injunctive relief in the form of an order directing Seldat and/or  
18 Seldat Distribution to comply with Cal. Lab. Code; and  
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- 20       h.      Such other relief as in law or equity may pertain.
  
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1 Dated: July 2, 2019

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1                   **PROOF OF SERVICE BY ELECTRONIC POSTING**

2                   I, the undersigned say:

3                   I am not a party to the above case, and am over eighteen years old. On July 2,  
4 2019, I served true and correct copies of the foregoing document, by posting the  
5 document electronically to the ECF website of the United States District Court for the  
6 Central District of California, for receipt electronically by the parties listed on the  
7 Court's Service List.

8                   I affirm under penalty of perjury under the laws of the United States of America  
9 that the foregoing is true and correct. Executed on July 2, 2019, at Los Angeles,  
10 California.

11  
12                   *s/ Kevin F. Ruf*

13                   Kevin F. Ruf

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